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09/875,487	06/06/2001	Tracy L. Francis	5127	7168

7590 03/07/2006  
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EXAMINER

SMITH, TRACI L

ART UNIT	PAPER NUMBER
3629	

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/875,487  
Filing Date: June 06, 2001  
Appellant(s): FRANCIS ET AL.

\_\_\_\_\_  
Milliken & Company  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed December 29, 2005 appealing from the  
Office action mailed May 31, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claim 15-33.

Claims 22, 26-27 and 31-33 been amended subsequent to the final rejection.

Claims 1-14 have been canceled.

**(4) Status of Amendments After Final**

The amendment after final rejection filed on December 28, 2006 has been entered.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

Although the examiner agrees with the summary of the claimed subject matter the examiner notes the applicant failed to identify by page, line numbers and drawings corresponding identifying the subject matter defined. For purpose the purpose of aiding

the Board during the review of this case the examiner has added references into the summary.

Summary as presented by appellant, with references added:

This invention relates to a system and method for the interactive evaluation and/or marketing of proposed surface covering, wall covering or floor covering designs, patterns, colors, etc., whereby a number of pre-qualified users, associates, or subscribers such as architectural and design professionals may review designs for such products and provide early feedback to the manufacturer of such products as to the desirability of such designs to permit the manufacturer to thereafter concentrate subsequent marketing efforts on those designs of greatest interest to, for example, the commercial purchasing community. Focused marketing efforts thereafter are directed to those designs indicated as being most likely to experience broad based acceptance. Also, users, associates, or subscribers may order samples and/or products at any time during the survey. **Pg 1(l. 1-14).**

Independent claims 15, 22, and 27 relate to an interactive computer based system and method for review of product designs, patterns and/or colors comprising a computer controlled internet-based interactive communications site for electronically communicating to a multiplicity of pre-qualified associates or subscribers one or more product designs in conjunction with a ballot style rating scale.**(Fig. 2-5)** The rating scale

includes a plurality of selectable response menu items indicating varying levels of likelihood of use of the one or more product designs wherein only a single menu item may be selected for each design. A single rating selection may be made by each of said subscribers and transformed back to the Web site for each of said one or more product designs whereby the likelihood of use of said one or more product designs may be estimated. The system further comprises a means for said subscribers to enter individualized comments concerning said one or more product designs(Pg. 9 I. 19 and Pg. 11 I. 1-11)and an interactive electronic shopping cart accessible by said associates or subscribers for ordering physical samples and/or products incorporating said one or more product designs. The interactive shopping cart is accessible by a link from a web document displaying both a product design and said selectable response menu items as initially communicated to subscriber, such that the shopping cart is accessible directly from said web document independent of selecting any given response menu item.(Pg. 13 I. 1-11)

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2002/0002482 A1	Thomas	1-2002
20020072993 A1	Sandus et al	6-2002

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 15-33 are rejected under 35 U.S.C 103(a) as being unpatentable over Thomas (USPgPub 2002/0002482) in view of Sandus et al (US Patent Publication 2002/0072993).

**(10) Response to Argument**

i. Claims 15-33

Appellants arguments are directed to the combination of references. Appellant argues that combining Sandus with Thomas “teaches” away from ordering products. However, examiner notes that applicants invention is directed to ordering samples or products. Therefore when read broadly, reference can be read as to be only ordering samples. Therefore, if a shopping cart is added to order samples of potential new products it does not constitute teaching away rather adds a way to gain a more significant response as to the from the users. Thomas teaches incorporating multimedia effects for a much more realistic survey.(Pg. 1 Para. 10). Enabling a user to order the sample for review gives a very realistic view of the sample or product being surveyed. At no time does applicant claim the user paying for samples OR products that are ordered, therefore ordering a sample could merely be an incentive for the user. It allows the user

to broaden their selection of samples that they can offer to their clients rather than having to pay to have samples for user in their stores.

Appellant further argues that in order to establish a case of prima facie the motivation or suggestion to combine must be found in the references used for combination and alleges references do not suggest or teach a motivation. The appellant further argues that the references are non-analogous art. The appellant also argues that hindsight is used for motivation to combine. The examiner states that the secondary reference Sandus identifies in the background of the invention (Pg. 1 para. 6) that e-commerce transactions in and of themselves are a method of gathering consumer data that is later used for two purposes; 1. boost revenues and lower costs 2. improving customer service by providing products they need or prefer. Both Thomas and Sandus are directed to gathering data about consumer(market research) in order to provide consumers with products they will buy, therefore Thomas and Sandus do fall into an analogous art description. The examiner further notes that Sandus teaches providing a business model that allows for enhanced customer services features while using less intrusive data marketing techniques while keeping customers abreast of products and services. (Pg 3 Para. 27). This suggests to one of ordinary skill in the art a method for manufactures to gain market information while still allowing merchants to provide access to new products and information. Examiner respectfully disagrees with appellants arguments of hindsight in view of the above reasons identifying knowledge with in the art at the time the claimed invention was made.

Appellant argues that all limitations are not taught by the combination of Thomas and Sandus. Appellant states that Sandus fails to identify the “shopping cart” limitation of appellants invention. The examiner respectfully disagrees and directs attention to Pg. 7 Para 83), Sandus teaches frames of a webpage that allow access to items such as a shopping cart. Therefore, examiner believes the combination of Thomas with Sandus teaches the limitation of appellants invention as claimed.

ii. Claims 22-28 and 30-33

Appellant argues manipulation in process according to MPEP 2116, for the specific floor covering designs. The examiner notes appellants invention is directed towards a method of gaining marketing information about a product. The fact that the product is a floor covering is not functional in the steps of the method. Whether the product is floor covering or stationary or cars the steps of the method would be performed in the same manner. The type of product does not effect the process- a process that differs from the prior art only with respect to nonfunctional descriptive material **that cannot alter how the process** steps are to be performed to achieve the utility of the invention. In appellants invention there is no manipulation of the “floor covering” design. The appellant is claiming a method of gathering information on a product not the method/process of making that product.

iii. Claims 17, 23, 28-31, 31

As to appellants arguments regarding the limitation of subscriber not being of a certain profession or group. The examiner notes that the art teaches supplying the survey to specific group of participants. Therefore, a group of certain professionals fall into a



specific category. The examiner notes as identified before the specific type of user for the survey does not change the steps of the method and/or process of the appellants invention.

iv. Claims 28, 30, 31 and 33

As to appellants arguments regarding the limitation of viewing samples before they are available for purchase. The examiner notes claim 33 is the only claim in which appellant positively recites the limitation of "before designs are released for purchase". It is also noted that appellants invention states the samples can reviewed before does not identify if the samples also be ordered before being put on sale. The examiner further notes that this limitation is inherent for marketing research, the basis of doing the research is to identify products that will be successful BEFORE you begin putting money into a advertising campaign. A manufacturer isn't going to release for a new product without having an idea as to the success of the product.

v. Claims 22-27 and 30-33

As to appellants arguments regarding the reference not teaching the limitation of ordering the specific product samples as described in appellants invention. Examiner notes the response is the same as to the argument 22-28 and 30-33 in that the type of product being surveyed or ordered does not effect the steps of the method and/or process.

**(11) Related Proceeding(s) Appendix**


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3629

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Traci L. Smith

  
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Conferees:

John Weiss 

Dean Nguyen 